



Employees' Retirement Board of Rhode Island
Monthly Meeting Minutes
Wednesday, February 8, 2012
9:00 a.m.
2nd Floor Conference Room, 50 Service Avenue

The Monthly Meeting of the Retirement Board was called to order at 9:05 a.m. Wednesday, February 8, 2012, in the 2nd Floor Conference Room, 50 Service Avenue, Warwick, RI.

I. Roll Call of Members

The following members were present at roll call: Deputy Treasurer Mark A. Dingley, Esq. for General Treasurer Gina M. Raimondo; Vice Chair William B. Finelli; Gary R. Alger, Esq.; Daniel L. Beardsley; Frank R. Benell, Jr.; Michael R. Boyce; M. Carl Heintzelman; John P. Maguire; John J. Meehan; Thomas A. Mullaney; Louis M. Prata, Linda C. Riendeau, and Jean Rondeau.

Also in attendance: Frank J. Karpinski, ERSRI Executive Director; Attorney Michael P. Robinson, Board Counsel.

Recognizing a quorum, Vice-Chairman Finelli called the meeting to order.

The following Board members arrived after the roll call: Roger P. Boudreau arrived at 9:10 a.m., and Richard Licht arrived at 9:15 a.m.

II. Approval of Minutes

On a motion by Gary R. Alger and seconded by Frank R. Benell, Jr., it was unanimously **VOTED: To approve the draft minutes of the January 11, 2012 meeting of the Employees' Retirement System of Rhode Island Board.**

On a motion by Gary R. Alger and seconded by Frank R. Benell, Jr., it was unanimously **VOTED: To approve the draft Executive Session minutes of the January 12, 2012 meeting of the Employees' Retirement System of Rhode Island Board.**

On a motion by Gary R. Alger and seconded by Frank R. Benell, Jr., it was unanimously **VOTED: To approve the Amended December 14, 2011 Draft Meeting Minutes of the meeting of the Employees' Retirement System of Rhode Island Board.**

III. Chairperson's Report

Deputy Treasurer Dingley provided the Board with an update on the investment portfolio. He noted that January was a very strong month for performance and the fund now has a balance of \$7.3 billion.

IV. Executive Director's Report

Director Karpinski apprised the Board that they are in possession of the Pension Application Report, Disability Subcommittee Report, and a letter from Mr. Robert Kando, the Executive Director of the Board of Elections (BOE), with the results of the election.

The Director then apprised the Board of the tabulation of ballots at the BOE for the Employees' Retirement Board election. He said the tabulation was successfully completed on February 3, 2012 and members will be sworn in at the annual meeting on March 14, 2012. Director Karpinski told the Board that Mr. Alger, Chair of the Election Subcommittee, will provide an update on the results of the election during the Subcommittee reports. The Director said that, provided the Board is in agreement, a motion will be required to accept the results of the election as certified by the BOE.

Director Karpinski apprised the Board that 1099R tax forms were mailed by January 31, 2012.

Mr. Finelli asked Director Karpinski if he had dates for the regional training sessions for the recently enacted Rhode Island Retirement Security Act of 2011 (RIRSA). The Director said dates would be forthcoming shortly.

Mr. Maguire asked about the status of on-line calculators to determine eligibility dates under RIRSA on ERSRI's website. The Director said they are currently being tested and expects they will be up in about four weeks.

V. Administrative Decisions

Administrative Appeal – Kendra J. Roy vs. ERSRI

Included in the Board Members' Books was the Hearing Officer's written decision, along with exhibits and supporting information in the matter of *Kendra J. Roy vs. ERSRI*. Attorney Robinson asked if consistent with Regulation Number 4, *Rules of Practice and Procedure for Hearings*, there were any written briefs, legal memoranda, or exceptions to the decision of the Hearing Officer which must have been submitted to the Executive Director not later than 10 days prior to the hearing. Director Karpinski apprised the Board that there had been and it is included in the Board book.

Attorney Robinson then said that pursuant to ERSRI's regulations, each party to the proceeding has the right to appear and to make oral arguments before the Retirement Board. Consistent with the Board's long standing policy, he apprised the appellant that this is not an opportunity to present new factual material to the Board, and that pursuant to ERSRI's regulations and Rhode Island case law, the Board owes deference to the Hearing Officer on factual determinations and questions of credibility, and cannot overturn the Hearing Officer on determinations of fact or credibility unless such determinations are found to be clearly wrong.

Attorney Robinson then asked the appellant if she intended to make any presentation on her own behalf or oral argument before the Board and she was then sworn in by the stenographer. After Attorney Robinson confirmed that Ms. Roy's intention would be to

proceed without counsel, he provided a synopsis of the *Kendra J. Roy vs. ERSRI* matter. There being a stenographer present, the parties presented their cases.

At the conclusion of the hearing a motion was made by Roger P. Boudreau and seconded by Michael R. Boyce to overturn the Hearing Officer's decision and to award Ms. Kendra J. Roy service credit for layoff time, and to allow her to purchase prior service credit for time she was temporarily assigned to serve as the Senior Water Division Account Clerk with the City of Woonsocket. A roll call was taken. The following members voted Yea: Deputy Treasurer Mark A. Dingley, Esq.; William B. Finelli; Gary R. Alger; Daniel L. Beardsley; Frank R. Benell, Jr.; Roger P. Boudreau; Michael R. Boyce; M. Carl Heintzelman; Richard A. Licht; John P. Maguire; John J. Meehan; Thomas A. Mullaney; Louis M. Prata; Linda C. Riendeau, and Jean Rondeau.

There being 15 votes cast, 15 voted in the affirmative, consistent with Rhode Island General Laws §36-8-6, *Votes of the Board -- Record of Proceedings*, there being a majority vote of the members present and voting at which a quorum is present, it was then

VOTED: To reverse the decision of the Hearing Officer in the matter of *Kendra J. Roy vs. ERSRI* and to award Ms. Roy the ability to purchase service credit for layoff time and to allow her to purchase prior service credit for time she was temporarily assigned to serve as the Senior Water Division Account Clerk with the City of Woonsocket.

Disability Appeal –Jennifer L. Leyden vs. ERSRI

Attorney Robinson confirmed with Ms. Leyden that Attorney Stephen T. Fanning no longer represents her based on the communications provided to the Retirement System and that it is her intention to proceed with the hearing and to represent herself.

Included in the board books, under separate cover, were the Findings of Fact as concluded by the Disability Subcommittee, transcripts from the appeal to the Disability Subcommittee, medical and supporting information for the matter of *Jennifer L. Leyden vs. ERSRI*.

Attorney Robinson asked if consistent with Regulation Number 9, *Rules pertaining to the application to receive an Ordinary or Accidental Disability Pension*, there were any written briefs, legal memoranda, or exceptions to the conclusions and recommendation of the Disability Subcommittee which must have been submitted to the Executive Director not later than 10 days prior to the hearing. Director Karpinski apprised the Board that all the information that was received relevant to the case from the Disability Subcommittee was included in Board members' books.

Attorney Robinson then said that pursuant to ERSRI's regulations, each party to the proceeding has the right to appear and to make oral arguments before the Retirement Board. Consistent with the Board's long standing policy, he apprised the appellant that this is not an opportunity to present new factual material or evidence to the Board. He said the Board affords deference to the conclusions of its Disability Subcommittee on

factual determinations and questions of credibility and will not overturn those determinations and assessments unless they are found to be clearly wrong.

The appellant was sworn in. Attorney Robinson then provided a synopsis of the *Jennifer L. Leyden vs. ERSRI* matter. There being a stenographer present, the parties presented their cases. John P. Maguire recused himself from the Disability Appeal of *Jennifer L. Leyden vs. ERSRI*.

At the conclusion of the hearing a motion was made by Michael R. Boyce and seconded by Roger P. Boudreau to overturn the decision of Disability Subcommittee which denied Ms. Leyden's application for accidental disability benefits. A roll call was taken. The following members voted Yea: William B. Finelli; Roger P. Boudreau; Michael R. Boyce; M. Carl Heintzelman; John J. Meehan; Louis M. Prata, and Linda C. Riendeau. The following members voted Nay: Deputy Treasurer Mark A. Dingley, Esq.; Gary R. Alger, Esq.; Daniel L. Beardsley; Frank R. Benell, Jr.; Richard A. Licht; Thomas A. Mullaney, and Jean Rondeau.

There being 14 votes cast, 7 voted in the affirmative, and 7 nay, consistent with Rhode Island General Laws §36-8-6, *Votes of the Board -- Record of Proceedings*, there was not a majority vote of the members present and voting at which a quorum was present, and the motion accordingly failed. Attorney Robinson referred the Board to the tie-vote resolution procedure contained in Regulation No. 4, and suggested that consistent with that procedure the matter could be postponed for further consideration at the next Board meeting, which will be March 14, 2012. Attorney Robinson noted the Regulation's further provision that if there should be another tie vote at the March 14, 2012 meeting, the Board can at that point either vote to postpone and reconsider the matter at a subsequent hearing, or the underlying Disability Subcommittee recommendation would be deemed affirmed.

On a motion by Deputy Treasurer Mark A. Dingley, Esq. and seconded by Gary R. Alger it was unanimously

VOTED: To postpone the matter of *Jennifer L. Leyden vs. ERSRI* in accordance with Regulation 4 to the March 14, 2012 Board meeting.

VI. Approval of the January Pensions as Presented by ERSRI

On a motion by Gary R. Alger and seconded by Louis M. Prata, it was unanimously

VOTED: To approve the January pensions as presented.

VII. Legal Counsel Report

Attorney Robinson apprised the Board on the *Zambarano v. Raimondo, et al., C. A. No. PC2011-2304* matter. He said the Judge granted a motion to stay enforcement of the Judgment pending resolution of certain issues on appeal. Attorney Robinson told the Board that ERSRI will accordingly maintain custody of the contributions at issue until such time as the case is resolved.

VIII. Committee Reports

Disability Subcommittee: The Disability Subcommittee recommended the following actions on disability applications for approval by the full Board as a result of its meeting on February 3, 2012:

Name	Membership Group	Type	Action
1. Peter Ferraro	Teacher	Accidental	Postpone
2. Robert Cahill	State	Ordinary	Postpone
3. Antonio Leite	Municipal	Accidental	Postpone

On a motion by Michael R. Boyce and seconded by Roger P. Boudreau, it was unanimously

VOTED: To approve the recommendation of the Disability Subcommittee meeting of Friday, February 3, 2012 on items 1, 2, and 3.

Election Subcommittee: Chairman Gary R. Alger, Esq., provided the Board with an update on the Retirement Board Election. He thanked the members of the committee, Mark Dingley, Jean Rondeau, Frank R. Benell, Jr. and Daniel L. Beardsley for their efforts. Chairman Alger then said the committee met on January 31st to discuss the ballot tabulation procedure for the count that occurred on Friday February 3rd. Chairman Alger apprised the Board that Director Karpinski provided him with the following official certified results from the BOE and said a total of 12,821 ballots were counted:

Vote for Active Teachers (Select Two)
Candace McCall - 748
Barry McPeake - 992
William B. Finelli – 1,377 - ELECTED
John P. Maguire – 1,429 – ELECTED
Total ballots 2,603

Vote for Retiree Representative (Select Two)
Lucille Mota-Costa – 4,570
Roger P. Boudreau – 6,098 - ELECTED
Michael R. Boyce – 6,842 ELECTED
Total ballots 10,218

Chairman Alger congratulated the winners and said they will be sworn in at the March 14, 2012 Board meeting. Additionally, he said Mr. Finelli is the President-elect of the National Council of Teachers Retirement (NCTR).

On a motion by Richard A. Licht and seconded by Linda C. Riendeau, it was unanimously

VOTED: Consistent with Regulation No. 5 Section 10, to certify the results of the Election based on the February 6, 2012 letter from the BOE and to direct the Executive Director to publish the results.

IX. New Business

Mr. Boudreau asked Director Karpinski for an update about the SRA Plus Option and the formulary used. The Director said ERSRI is still working with Gabriel, Roeder, Smith and Company and hopes to have information shortly. Mr. Boudreau then asked about the viability of members who selected the SRA Plus option to make changes, notwithstanding that the documents signed were not binding contracts based on the legal opinion provided. Director Karpinski said there are no provisions in the statute authorizing such changes and changes are only available for options 1 and 2. Mr. Boudreau felt there may be room for consideration of new legislation.

Mr. Maguire asked Deputy Treasury Dingley for an update regarding vendor selection for the 401(a) defined contribution plan. Deputy Treasury Dingley provided the Board with an update and said the State Investment Commission (SIC) was on schedule. Mr. Beardsley wanted to confirm that the SIC would choose the entity and the Employees' Retirement Board would administer the plan. Deputy Treasury Dingley and Director Karpinski confirmed.

Mr. Boudreau asked Deputy Treasurer Dingley what would happen to the employer contributions in a non-vested individual member account if the member terminates. Deputy Treasurer Dingley said if the member has less than 3 years of service (non-vested), those funds would be transferred into a forfeiture account and used to reduce future employer contributions.

X. Adjournment

There being no other business to come before the Board, on a motion by Gary R. Alger and seconded by Roger P. Boudreau the meeting adjourned at 10:40 a.m.

Respectfully submitted,

Frank J. Karpinski

Executive Director